

**Board of Appeals**  
Town Hall • 40 Center Street • Fairhaven, MA 02719  
Meeting Minutes

**I. ADMINISTRATIVE BUSINESS**

**1. Quorum/Attendance**

Kenneth Kendall opened the March 6, 2024, meeting at 6:00 PM. He introduced the board members and read the protocol for Zoning Board of Appeals meetings and Open Public Meeting Law.

For this meeting, the Zoning Board of Appeals convened in-person, as well as by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date; some attendees participated by phone and video conference and used chat on Zoom.

**Quorum/Attendance, Town Hall:** Kenneth Kendall, Ruy daSilva, Daryl Manchester, Peg Cook, Andrew Romano, Patrick Carr, and Amy Goyer

**Absent:** Kristen Russell

**Building Commissioner:** Randy Bassett

**Recording Secretary:** Stephanie Fidalgo

**2. Acceptance of the February 6, 2024, meeting minutes**

Ruy daSilva made a motion to accept the minutes of the February 6, 2024, meeting, and was seconded by Andrew Romano.

The motion passed unanimously. (7-0)

**II. PUBLIC HEARINGS:**

1. **REF#: ZBA-023-029: 3 Birchfield Street, Map 24, Lot 280. Applicant: Brian Slowik Owner: Slowik Family Trust.** Applicant seeks a Special Permit for storage of a mobile home and for occasional occupation longer than forty-eight (48) hours consecutively, pursuant to Fairhaven Zoning Bylaw 198-16 Use Regulation Schedule, footnote 8. In accordance with Fairhaven Zoning Bylaw 198-8 Special Permit, A. this permit shall be subject to additional conditions, safeguards and limitations on time, space, and use as the board may reasonably require. — Last continued from December 5, 2023, ***Applicant requests to be continued to the April 2, 2024 meeting.***

Ms. Fidalgo noted the continuing litigation regarding this property as the reason for the continuation request.

Andrew Romano made a motion to continue the hearing for 3 Birchfield Street to the April 2, 2024, meeting and was seconded by Amy Goyer.

The motion passed unanimously with Ruy daSilva, Daryl Manchester, Peg Cook, Andrew Romano, Patrick Carr and Amy Goyer in favor (6-0).

2. **REF#: ZBA-024-003: 11 Delmont Street, Map 28B Lot 715 and Map 29, Lots 6C & 8.** Applicant and Owner: Mark Blouin. Applicant seeks 1. An 84 sq. ft. Variance for the construction of a 784 sq. ft. garage, as compared to the maximum 700 sq. ft., pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and Uses A. (1) and 2. A 8 ft. Variance for the height of the garage to be 28 ft. as compared to the maximum 20 ft., pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and Uses A. (2). *Continued from February 6, 2024.*  
*(Secretary's note: there had been a scribe's error regarding the height of the garage, which has been corrected on the March agenda and in these minutes.)*

Mark Blouin spoke to the Board. He explained that the garage would be used for housing his vehicles as well as general storage. Being in the VE-16 zone, it required specialized construction methods including breakaway walls, elevated supports, and a high-pitched roof. He also explained that he had plans to shift the location of the garage closer to the street and was exploring his options to have the private, unpaved section of Delmont Street discontinued and integrated into his property.

When there were follow-up questions regarding the eventual placement of the garage on the property, Mr. Bassett explained that he had advised Mr. Blouin to present his initial site and design plans as the Variances requested were for the height and size of the garage.

Mr. Romano inquired if the applicant had considered a smaller footprint and height for the garage to eliminate the need for the Variances, with Mr. Blouin explaining that the height was required as part of the velocity zone requirements and that the footprint could not be made smaller without compromising the usability of the garage.

Mr. daSilva had an additional question regarding the location, and Mr. Bassett answered the location of the garage may only change if Mr. Blouin's plan for a street discontinuance was successful.

Ms. Goyer inquired about the inclusion of a second story of the garage, with Mr. Bassett explaining that it would be used as a flood safe storage area and even without the second floor, the height would still be higher than average due to the property being in a flood plain.

Mr. Carr inquired about the status of Delmont Street given that one section was labeled as public and another as private, with Mr. Blouin confirming that he would only seek to discontinue the private section that abutted his property. He also confirmed for Mr. Carr that

the garage would be raised up on stilts as part of the construction requirements. Mr. daSilva inquired if there were any plans to tie the garage into the water and sewer lines, but Mr. Blouin confirmed that that the garage would be strictly for storage.

Mr. Carr confirmed with Mr. Kendall that the Board would only be voting on the requested height and size Variances.

When Mr. Kendall invited members of the public to speak, Catherine Hanley of 239 Sconticut Neck Road spoke in favor via Zoom.

Patrick Carr made a motion to approve 1. An 84 sq. ft. Variance for the construction of a 784 sq. ft. garage, as compared to the maximum 700 sq. ft., pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and Uses A. (1) and 2. An 8 ft. Variance for the height of the garage to be 28 ft. as compared to the maximum 20 ft., pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and Uses A. (2), and was seconded by Amy Goyer.

The motion passed unanimously with Ruy daSilva, Daryl Manchester, Peg Cook, Andrew Romano, Patrick Carr and Amy Goyer in favor (6-0).

3. **REF#: ZBA-024-005: 11 Fishermans Road, Map 43A, Lots 186, 187, and 188. Applicant: Lev Bronstein Owner: Lev Bronstein and David A. Hirsh.** Applicant seeks a finding from the Board under MGL 40A, § 6, to allow an increase of area of a nonconforming use by replacing the existing single-family residence and shed with a new 2,188 sq. ft. two-story single-family residence with the addition of an 810 sq. ft. semi-detached garage, and that the addition is not more substantially detrimental than the existing nonconforming use to the neighborhood.

Lev Bronstein spoke to the Board, outlining that the house was purchased two years ago with plans that himself, Mr. Hirsh, and his mother and sister would all reside there. The current plan was to rebuild the house in the same footprint as the existing structures, with the addition of a semi-detached two-story garage. There were plans to have a studio space in the rear of the proposed new house and a recreation and crafting area above the garage. This arrangement would help the different family members have enough space and separation.

David Hirsh also spoke to the Board, explaining that the addition of the garage would increase the nonconformity of the lot by raising the building coverage to be just over the maximum allowed (17.3% as compared to the maximum 15%.) He also explained that when rebuilding the house, they would use the same footprint as the existing shed, but would not rebuild the adjoining deck and stairs, which would be more compliant with the setback requirements.

Matt Pike, the owner of Map 43A, Lot 189, requested to speak to the Board via Zoom. He explained to the Board that the patio and shed at the rear of the lot had been built by the previous owners unpermitted in 2017 and extended into his lot. Debris remained on his lot

from that construction. He requested that if the proposed plan was for a complete teardown and rebuild, that the applicants would consider adjusting the footprint to have more separation from his property, suggesting a minimum of 10 feet. He also had concerns with how the sewer service ran under the properties.

Mr. Hirsh explained that the current plan was to utilize the existing footprint and foundation if possible. However, they were still in talks with the structural engineer on the feasibility of reuse of the foundation, given that the new plan would be for a two-story house. Mr. Kendall pointed out that the proposed plan noted a new foundation and Mr. Bassett noted that he had advised the applicants that the Board may request a plan that would better conform to the setback requirements. While they would still be over the Building Coverage percentage and would not meet the rear setback, they could draft a plan that would meet the side setback requirements of 30 ft. to each size.

Mr. Romano inquired if a request to move the foundation would be in line with how the application was advertised, with Mr. Bassett answering that it would be allowable. To Ms. Goyer's question on the height of the garage, as the garage was semi-detached, it was not held to the height requirements for free-standing accessory structures.

Mr. Pike again spoke to the Board, inquiring if the sewer service could also be adjusted if the foundation was moved. Mr. Bassett answered that the location of the sewer service would depend on the finalized location of the new house and that the BPW would have purview over the utilities.

The Board and Mr. Bassett discussed the new setback requirements, with Mr. Bassett explaining that as this was a corner lot, the zoning required 30 ft. setbacks on all sides, save for the front. Mr. Carr suggested changing the footprint of the rear addition to be better conforming. The Board discussed other possible footprints for the rebuilt structure that may allow the applicants to better conform to the zoning requirements.

On questions regarding the foundation, the applicants were working to preserve the footprint to save the costs on rebuilding the house, though there would have to be some new additions to the foundation for the rear addition and garage. However, there was a chance that the project would require a new foundation, and Mr. daSilva suggested relocating the footprint.

Mr. Carr asked for additional information the structural information of the existing foundation and then suggested that even if the main house was built on the existing foundation, that the rear addition could be reworked to better conform to the setback requirements.

Ms. Goyer inquired if the laws regarding extension and alterations of nonconforming lots could apply to a complete rebuild, with Mr. Bassett confirming that they could.

Mr. Pike again spoke to the Board, pointing out that the rear shed on the lot was built in 2017, separate from the original house built in the 1950's. Ms. Goyer then asked if that shed's footprint could be considered, given that it was built unpermitted, with Mr. Bassett explaining that it could.

Mr. Pike again spoke to the Board, asking about the statute of limitations on unpermitted buildings. Mr. Bassett answered that he would need to check which limitation periods would apply to the shed. Mr. Pike then added that he had previously lodged a complaint with the Building Department but had never received a response.

Ms. Goyer asked for further clarification on the increase in nonconformity, with Mr. Hirsh explaining that it would be over the building coverage.

When Mr. Kendall requested a motion, the Board members raised their concerns about being able to approve the plan as-is. Mr. Kendall explained to the applicants that if the application was denied, they would be unable to reapply for two years. However, if they requested a continuance to a future meeting, there would be time to rework the plan and present an updated and more conforming version to the Board.

There were questions regarding which meeting the application could be continued to and the questions would need to be answered and issues to be addressed by the next meeting. The Board suggested reworking the footprint to be tighter and better meet the setback requirements. Mr. Bassett explained the corner lot setback requirements the new structure would need to meet.

Patrick Carr made a motion to continue the hearing for 11 Fishermans Road to the April 2, 2024, meeting and was seconded by Andrew Romano.

The motion passed unanimously with Ruy daSilva, Daryl Manchester, Peg Cook, Andrew Romano, Patrick Carr, and Amy Goyer in favor (6-0).

4. **REF#: ZBA-024-006: 5 Gilbert Street, Map 29A, Lots 236 and 238 - 242. Applicant: Bruce Penn**  
**Owner: Bruce H. & Deborah J. Penn.** Applicant seeks a finding from the Board under MGL 40A, § 6, to allow an increase of area of a nonconforming use and replace the existing rear porch with a 135 sq. ft. three season room and adjoining stairs, and that the addition is not more substantially detrimental than the existing nonconforming use to the neighborhood.

Bruce Penn spoke to the Board via Zoom. He explained that the proposed three-season room porch would be twice the size of the existing porch and would extend out to square off the house by aligning with the existing rear wall of the house.

When Board opened the floor for public comment, Edward Dillon of 6 Raymond Street spoke in favor.

Ruy daSilva made a motion to approve a finding from the Board under MGL 40A, § 6, to allow an increase of an area of a nonconforming use and replace the existing rear porch with a 135 sq. ft. three season room and adjoining stairs, and that the addition is not more substantially detrimental than the existing nonconforming use to the neighborhood and was seconded by Andrew Romano.

The motion passed unanimously with Ruy daSilva, Daryl Manchester, Peg Cook, Andrew Romano, Patrick Carr, and Amy Goyer in favor (6-0).

5. **REF#: ZBA-024-007: 227-229 Huttleston Avenue, Map 28, Lot 1. Applicant: Kevin Fournier Owner: Town of Fairhaven.** Applicant seeks a Variance to build a 20 ft. x 20 ft. shed in the front parking lot of the property as opposed to the rear, pursuant to 198-22 Accessory Buildings A (3).

Kevin Fournier spoke to the Board. He explained that there had been previous plans to build this shed on the rear of the property, but there are noted issues with the soil conditions and drainage on that section of the property. After conferring with Ms. Kelley Ramirez, Director of the Recreation Center, and Martha Reed, Director of the Council on Aging, the three had agreed to build on the side of the property. While he had received prior approval from past Building Commissioner, Joel Reed, delays in the project regarding the timing of involvement from New Bedford Voc-Tech had pushed back the start of it by approximately 18 months. Mr. Bassett then pointed out the need for a Variance for this project.

There was no public comment on this petition.

Mr. Kendall inquired about the plans with the project and how it did not meet the five criteria required for a Variance. Mr. Fournier read out his answers regarding the project criteria, noting the cost it would require moving the shed and rebuilding the concrete pad. He also explained that he did not have any paperwork from Mr. Reed regarding his approval.

Ms. Goyer had questions regarding whether this request for a Variance would be considered a unique circumstance. Mr. Kendall noted that granting permits for sheds in the front of properties would be a weakening of the bylaw. Mr. Bassett explained that he had allowed construction of the shed to continue due the collaboration with Voc-Tech, but had noted to the permit that it was to be done at their own risk and pending Board of Appeals approval.

Mr. Carr outlined the possibility of building the shed as a temporary and then having it moved to a more compliant pad afterward. Mr. Fournier outlined possible alternate locations, such as behind the Recreation center, or further back into the parking lot. In discussing new locations,

Ms. Fidalgo pointed out that the playground behind the Recreation Center would be moving in the future.

The Board continued to discuss the possible options and costs of relocating the shed. Mr. Fournier would need to make arrangements with the Council on Aging since their parking would be affected by the shed changing locations.

Mr. Romano inquired about the reason for building the shed, with Mr. Fournier explaining that it would house voting equipment since the process of moving the equipment from Town Hall to the Recreation Center often required a full day of work. Mr. Romano also asked if it was better for the applicant to continue the petition instead of denying it, but the Board ultimately agreed that they could not approve the application.

Patrick Carr made a motion to approve a Variance to build a 20 ft. x 20 ft. shed in the front parking lot of the property as opposed to the rear, pursuant to 198-22 Accessory Buildings A (3), and was seconded by Andrew Romano.

The motion failed to pass with Ruy daSilva, Daryl Manchester, Peg Cook, Andrew Romano, Patrick Carr and Amy Goyer against (0-6).

Amy Goyer made a motion to adjourn and was seconded by Andrew Romano. All were in favor.

The meeting adjourned at 7:08 PM.

Respectfully Submitted,  
Stephanie A. Fidalgo  
Recording Secretary  
Board of Appeals

*Approved, April 2, 2024*